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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92883; File No. SR-ICEEU-2021-016]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Part EE of its Delivery Procedures.

September 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 23, 2021, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4)(ii)<sup>4</sup> thereunder, such that the proposed rule was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change**

The principal purpose of the proposed amendments is for ICE Clear Europe to make certain amendments to Part EE of its Delivery Procedures to add provisions relating to delivery of an additional contract, the ICE Endex Austrian Central European Gas Hub AG (“CEGH”) Virtual Trading Point (“VTP”) Natural Gas Daily Futures (“ICE Endex VTP Natural Gas Daily Futures”), that will be traded on the ICE Endex exchange and

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(a).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

cleared at ICE Clear Europe. The amendments also propose to correct the name of the ICE Endex CEGH Austrian VTP Natural Gas Futures to ICE Endex Austrian CEGH VTP Natural Gas Futures (“ICE Endex VTP Natural Gas Futures”) and make certain corresponding updates throughout Part EE.<sup>5</sup>

## **II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### **(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **(a) Purpose**

ICE Clear Europe is proposing to amend Part EE of its Delivery Procedures to add provisions relating to delivery of an additional contract, the ICE Endex Austrian CEGH VTP Natural Gas Daily Futures (“ICE Endex VTP Natural Gas Daily Futures”), that will be traded on the ICE Endex exchange and cleared at ICE Clear Europe. The proposed amendments also correct the name of the ICE Endex CEGH Austrian VTP Natural Gas Futures to ICE Endex Austrian CEGH VTP Natural Gas Futures (“ICE Endex VTP Natural Gas Futures”) and make certain corresponding updates throughout Part EE.

Proposed amendments to Part EE would set out the delivery specifications and procedures for deliveries under the Contract. Delivery would be effected by the transfer of

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<sup>5</sup> Capitalized terms used but not defined herein have the meaning specified in the ICE Clear Europe Clearing Rules (the “Rules”).

rights to natural gas at the VTP from a Transferor (nominated by the Seller and which may be the Seller) to the Clearing House and from the Clearing House (via its nomination agent) to a Transferee (nominated by the Buyer and which may be the Buyer) through the input of Trade Nominations into the CEGH electronic system. Under Part EE, Clearing Members would authorize the Clearing House to make Trade Nominations on their behalf. The amendments would also establish certain timing requirements for exchange of futures for physical and swap transactions under exchange rules.

Proposed amendments to Part EE would address certain the responsibilities of the Clearing House and relevant parties for delivery under the Contracts, supplementing the existing provisions of the Rules. Specifically, the Clearing House would not be responsible for the performance of CEGH. Further, neither the Buyer nor the Seller, nor their Transferees or Transferors, would have any claim against the Clearing House for any loss incurred as a result of the condition or operation of the Transmission Network unless provided in the ICE Endex Rules.

A definition of “ICE Endex VTP Natural Gas Daily Futures” is being proposed. Where applicable, amendments will be made throughout Part EE to apply to the ICE Endex VTP Natural Gas Daily Futures in addition to ICE Endex VTP Natural Gas Futures. The existing defined term “ICE Endex VTP Natural Gas” is being proposed to be changed to “ICE Endex VTP Natural Gas Futures” for clarity and to distinguish that contract from the new daily futures contract. Various other corrections to the use of defined terms and other typographical and similar corrections are also being proposed.

Section 3.4 (which describes the price of the Contracts) is being proposed to be amended to provide that the price at which the Contract is delivered is the Exchange Delivery Settlement Price for the Delivery Day of each of the ICE Endex VTP Natural Gas Futures or ICE Endex Natural Gas Daily Futures in accordance with the ICE Endex Rules (instead of the Business Day immediately prior to the calendar day on which the Delivery

Month for the ICE Endex VTP Natural Gas Futures commences). This change is intended to update the Delivery Procedures to reflect current practice with respect to the ICE Endex VTP Natural Gas Futures.

Section 3.6 (which describes cessation of trading) is being proposed to be revised so that such procedures apply to ICE Endex VTP Natural Gas Daily Futures in addition to ICE Endex VTP Natural Gas Futures. The description of the cessation of trading is also being proposed to be revised to clarify that it is consistent with the ICE Endex Rules. The ICE Endex VTP Natural Gas Daily Futures ceases trading one business day prior to the Delivery Day.

Section 3.7 (which describes the Exchange for Physicals (EFPs) and Exchange for Swaps (EFSs)) is being proposed to be amended to specify that ICE Endex VTP Natural Gas Daily Futures, EFPs and EFSs may be posted up to thirty minutes following the cessation of trading in accordance with ICE Endex Rules.

In Section 6 Delivery Timetable, an outdated reference to ICE Endex Austrian VTP Natural Gas Futures is being proposed to be updated to ICE Endex VTP Natural Gas Futures.

A new Section 8 is being proposed to be added which includes a routine delivery timetable, from the last trading day of the Contract through final settlement, for ICE Endex VTP Natural Gas Daily Futures. The timetable specifies procedures, deadlines and requirements submissions of delivery intentions, nominations of Transferors or Transferees, Conversion and Confirmation Reports, notification files to the nomination agent, provision of Buyer's and Seller's security, final confirmation of the delivery report, release of Seller's security and Buyer's top-up following completion of delivery, payment and invoicing.

A new Section 9 is being proposed to be added which includes a delivery timetable for failed delivery for ICE Endex VTP Natural Gas Daily Futures. The timetable specifies the procedures and timing with respect to calling and releasing additional Seller's Security

and/or Buyer's Security and invoicing, payment and receipt of failed deliveries. A note is also added that, in the event of a failed delivery, the Clearing House may retain Buyer's Security and/or Seller's Security.

A new Section 11.2 is being proposed to be added that provides a delivery documentation summary with respect to ICE Endex VTP Natural Gas Daily Futures. The timetable specifies the reports produced by the Clearing House and made available to Buyers and Sellers electronically, an explanation of each such report, and when each such report is made available. A note is also added that provides that such timetable may be altered at the discretion of the Clearing House.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>6</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are designed to facilitate the clearing of a new physically settled natural gas futures contract that is being launched for trading by the ICE Endex exchange. The amendments would set out the obligations and roles of Clearing Members and the Clearing House. ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contract (and to address physical delivery under such contract) and to manage the risks associated with such contract. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the Contract as set out in the proposed Delivery Procedures amendments,

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<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>7</sup> (In ICE Clear Europe’s view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).<sup>8</sup>)

In addition, Rule 17Ad-22(e)(10)<sup>9</sup> requires that each covered clearing agency establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries. As discussed above, the amendments to the Delivery Procedures relating to the delivery and settlement under the Contract and ICE Endex exchange contract terms would set out the obligations and roles of Clearing Members, the Clearing House and the Central European Gas Hub (“CEGH”). The amendments would also adopt relevant procedures for such deliveries, which would facilitate identifying, monitoring and managing risks associated with delivery.

#### (B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Delivery Procedures in connection with the listing of the Contract for trading on the ICE Endex market. ICE Clear Europe believes that such contracts would provide opportunities for interested market participants to engage in trading activity in the Austrian VTP Natural Gas market. ICE Clear Europe does not believe the amendments

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 17 C.F.R. 240.17Ad-22(e)(10).

would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

**(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

**Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic Comments:**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2021-016 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2021-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2021-016 and should be submitted on or before [insert date 21 days from publication in the Federal Register].



For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>10</sup> 17 CFR 200.30-3(a)(12).